

**COMMISSIONERS**  
MARC SPITZER, Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON



FEB 11 2003

RIAN CMcNEIL  
Executive Secretary

**EX PARTE OR LATE FILED ARIZONA CORPORATION COMMISSION**

January 30, 2003

**ORIGINAL**

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW, Suite TW-8B201  
Washington, DC 20554

The Honorable Michael J. Copps  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street SW, Suite TW-8B302  
Washington, DC 20554

The Honorable Kathleen Q. Abemathy  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street SW, Suite TW-8B204  
Washington, DC 20554

The Honorable Kevin J. Martin  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street SW, Suite TW-8C302  
Washington, DC 20554

The Honorable Jonathan S. Adelstein  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street SW, Suite TW-8B115  
Washington, DC 20554

**Re:** Notice of Written Ex Parte Comment - Triennial Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147, Notice of Proposed Rulemaking (rel. Dec. 20, 2001).

Dear Chairman Powell and Commissioners Abemathy, Martin, Copps and Adelstein:

Since passage of the Telecommunications Act of 1996, the Arizona Corporation Commission ("ACC" or "Arizona Commission") has been actively engaged in proceedings designed to bring competition to Arizona consumers in all telephone markets in the State. We have made considerable progress in this regard, having just recently completed the first two phases of our review of the prices Qwest Corporation charges its Arizona competitors. We are also on the verge of completing our extensive review of Qwest's Section 271 filing.

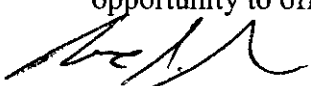
While we support the FCC's development of a national list of unbundled network elements ("UNEs"), we believe that it is important for the states to have input into the national list of UNEs developed by the FCC. We also believe that states must continue to have the flexibility to add to the national list of UNEs. Finally, we believe that the decision to de-list any UNEs which comprise UNE-Platform must be made at the state level, subject to national guidelines as appropriate. Such a determination should be based upon a comprehensive factual record developed by the state, so that local economic, competitive and operational barriers can all be considered and given appropriate weight. The importance of local market conditions and local input into UNE determinations was recently highlighted by the United States Court of

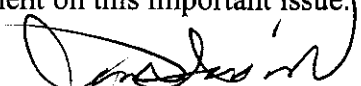
Appeals for the District of Columbia Circuit in United States Telecom Association v. FCC, 290 F.3d 415 (D.C. Cir. 2002).


If effective competition is ever to be realized, the FCC and states must combine their strengths and act together to ensure that both national and state policy objectives are realized. The FCC has been very vigilant in the past to secure state input before taking any actions which could interfere with or undo the efforts of state commissions to bring competition to their consumers. In Arizona, we believe our consumers are finally on the verge of realizing the significant benefits that effective competition brings. Many of our competitive policies, however, were designed based upon the availability to competitors in Qwest's markets of the existing set of UNEs which comprise the UNE-Platform. If the availability of UNE-Platform is severely restricted by the FCC through its actions in this case, we believe that this could effectively set back competition in Arizona for several years. Any restriction in the availability of UNE-Platform should only be made after a determination by the state that such a restriction is appropriate, given current conditions in the state.

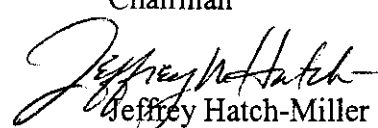
The FCC's actions in this case should act to strengthen the federal-state partnership evidenced in its recent consumer protection and competition dockets, in which it has encouraged states to build upon the FCC's national standards to more effectively address local concerns and needs within that particular state.' The FCC's actions should also build upon the federal-state partnership established as part of the Section 271 process which has also proved to be very effective in determining compliance by the Bell Operating Companies.

In summary, we believe that State commissions are best equipped to deal with unique market and competitive conditions in our particular states and that if we as state regulators are to play an effective role in bringing and sustaining competition in local markets, we must have the flexibility to assess whether removal of any UNEs that comprise UNE-Platform is appropriate in light of any competitive, economic and operational barriers that may exist. We appreciate this opportunity to offer comment on this important issue.

  
Marc Spitzer  
Chairman

  
Jim Irvin  
Commissioner

  
William A. Mundell  
Commissioner

  
Jeffrey Hatch-Miller  
Commissioner

  
Mike Gleason  
Commissioner

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<sup>1</sup> See Implementation of the Subscriber Carrier Selection Chances Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of consumers' Long Distance Carriers, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16036, para. 87 (rel. August 15, 2000); In the Matter of Truth-In-Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999); Implementation of the Telecommunications Act of 1996 Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998); and In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147, 15 FCC Rcd 3693 (1994).

## CERTIFICATE OF SERVICE

I do hereby certify that I have this 30<sup>th</sup> day of January 2003, served all persons listed below with a copy of the foregoing attached Ex-Parte Letter by placing a true and correct copy of the same in the United States Mail, Postage prepaid, addressed to the parties listed below:

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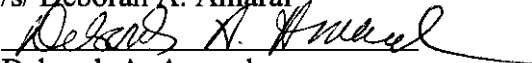
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/s/ Deborah A. Amaral

  
Deborah A. Amaral